



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-135
Regulation Title:	Treatment Foster Care Standards for Child Placing Agencies
Action Title:	Establish Regulation
Date:	December 18, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation specifically addresses treatment foster care services provided by licensed child-placing agencies. Providers of treatment foster care are currently regulated by two different sets of regulations, the Minimum Standards for Licensed Private Child-Placing Agencies (22 VAC 40-130-10 promulgated by the State Board of Social Services) and Case Management Treatment Foster Care Services (12 VAC 30-130-900 through 12 VAC 30-130-1000 promulgated by the Department of Medical Assistance Services). This regulation will consolidate these two sets of regulations in order to streamline the Department of Social Services' (department) regulatory oversight of agencies providing these services and make the regulation easier to follow. Having one regulation will make the licensure and certification process more efficient. The new regulation will apply to: (1) all licensed child placing agencies that wish to provide treatment foster care services, whether or not they apply for certification as a Medicaid enrolled provider of

treatment foster care case management services; and (2) localities that elect to apply for licensing certification.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The statutory mandate for promulgating this regulation is found in § 63.2-1734 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.1734>) This statute requires the State Board of Social Services to promulgate regulations for the activities, services and facilities to be used by persons and agencies required to be licensed under this section of the Code of Virginia and to design the regulation to ensure that they are conducive to the welfare of the children under the custody or control of such persons or agencies. The statute requires that the regulations include matters relating to the sex, age, and number of children to be cared for, the buildings and premises to be used, and reasonable standards for the activities and services provided to the children. Treatment foster care is one of the services provided to children through licensed child-placing agencies.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

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regulation is necessary to protect the safety and welfare of children and families receiving services from these agencies and to ensure a minimum level of quality to the care and services provided by the agencies. The regulation enables agencies to become certified to receive reimbursement for treatment foster case management services through Medicaid. The citizens of the Commonwealth and the local public departments of social services usually pay fees for services from these agencies. These individuals and local departments rely on the licensing authority to regulate the agencies, monitor the safety and welfare of children placed with the licensed agencies and provide certification for eligibility to receive Medicaid reimbursement for treatment foster care case services. The new regulation will provide clarification and reduce confusion regarding certification and eligibility for Medicaid reimbursement of treatment foster care case management services. Certification will allow agencies to access an alternative funding source.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The new regulation will consolidate two separate sets of regulations. This new regulation will meet the requirements of all new federal and state legislation since 2000. Several important criteria will be included to assist in making the decision as to whether a family should be approved to provide treatment foster care. To comply with the Multiethnic Placement Act, standards will be included stating that placement decisions for children may not be based solely on race. Standards will be included to cover staff training, foster home placement agreements and the scope and applicability of this regulation. Certain information must be provided to the agency prior to the child's admission into the program. Requirements for maintaining confidentiality will be delineated. Agencies will be required to collect data on and periodically evaluate their programs and services.

These standards are considered crucial since the licensed agencies make decisions that have a life-long impact on a child. Currently, the Minimum Standards for Licensed Private Child-Placing Agencies do not address requirements for treatment foster care, staff training or foster parent orientation and training. The department now certifies qualified child-placing agencies to provide treatment foster care case management services to foster children based on the regulation of the Department of Medical Assistance Services since the Department of Social Services does not have a regulation covering treatment foster care services.

Overall, the proposed regulation recognizes the current practice of treatment foster care agencies in Virginia.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

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Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Localities will not incur any additional costs because of this proposed regulation. There are only twenty-three child-placing agencies that will be affected by the regulation. These agencies are already licensed by the department. Therefore, hiring additional staff to regulate these agencies will not be required. Minor costs for printing and mailing of the regulation will be required. However, the state already prints and mails out regulations and other pertinent documentation to these twenty-three agencies. Therefore, these minor costs would be absorbed as part of the ongoing cost of doing business.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

This new regulation will alleviate the need for agencies providing treatment foster care services to be regulated by two separate regulations. Currently, the Minimum Standards for Licensed Private Child-Placing Agencies do not address requirements for treatment foster care. The department now certifies qualified child-placing agencies to provide treatment foster care case management services to foster children based on the regulation of the Department of Medical Assistance Services since the Department of Social Services does not have a regulation covering treatment foster care services. This new proposed regulation will blend the two different regulations currently being used and will include requirements for:

- Initial and renewal applications;
- Organization and administration of the agency;
- Board members who are also foster parents with the same agency;
- Financial responsibilities including ratio of assets and auditing criteria;
- Maintaining a professional staff and office in Virginia;
- Office conditions, posting of the license and inspections;
- Compliance with the standards;
- Disclosure of information;
- Policies and procedures;
- Program description;
- Periodic program evaluation;
- Job descriptions and personnel records;
- Medicaid funded treatment foster care;
- Intake and assessment processes in treatment foster care;
- Staff qualifications, training and on-going staff development;
- The organization of service plans and progress reports required in treatment foster care;
- Documentation;
- Time frames for completing required documentation of service plans, progress reports and discharge planning;
- Smaller caseloads;
- Certain exceptions for emergency and short-term placements;
- Information required in social histories for children;
- Consultation and notification to the public agencies placing children;
- Supervision of children;
- Maintaining confidentiality of a child's record;
- The storage and retention of records;

- Electronically sharing and or storing of information;
- Policies and procedures regarding behavior management;
- Foster home placement agreements;
- Placement and pre-placement visits;
- Medical and dental information, routine examinations and care;
- Comprehensive Individual Plan of Care with target goals and objectives, progress reports and discharge plan;
- Scheduled visitation and face-to-face contact with the child;
- Clothing and allowance requirements;
- The composition and qualifications for the treatment team;
- Crisis intervention and physical restraint policies;
- Comprehensive discharge planning and discharge summary information;
- Treatment foster care for children placed in permanent foster care;
- The treatment foster home study;
- The treatment foster home capacity;
- Treatment foster family orientation and training including pre-service training and ongoing training;
- Periodic re-evaluation of the treatment foster homes including the child's adjustment, progress and the treatment parent's level of skills;
- Treatment foster home records;
- Respite care;
- Placement of children from out-of-state and agency responsibilities;
- Reports to the Virginia Department of Social Services; and
- Reporting abuse, neglect or death of a child.

The current practice of treatment foster care agencies in Virginia is reflected in the proposed regulation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

One alternative would be to continue to regulate child placing agencies with two different sets of standards: one promulgated by the Department of Social Services and one promulgated by the Department of Medical Assistance Services. However, developing this regulation will clarify and streamline the regulatory process and help alleviate duplicative requirements of state and federal programs. Agencies have requested that a simplified, comprehensive, regulation for treatment foster care services be developed.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The notice of intent to promulgate regulations for treatment foster care was published in the Virginia Register on January 14, 2002. The public comment period was from January 14, 2002, to February 13, 2002. During this time no comments were received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The department has reviewed the proposed regulation to ensure that it is easily understood. There were no public comments submitted for this regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The proposed regulation will be reviewed every four years. The regulation will be reviewed earlier if revisions are required prior to the four year review.